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In the

Supreme Court of the United States

October Term, 1939.

No. [redacted] 35

KANSAS CITY, MISSOURI, a Municipal Corporation,
Petitioner,

vs.

L. SINGER & SONS, a Corporation, ET AL., *Respondents.*

BRIEF OF UNION PACIFIC RAILROAD COMPANY, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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In the

Supreme Court of the United States

October Term, 1939.

No. 826.

KANSAS CITY, MISSOURI, a Municipal Corporation,
Petitioner,

vs.

L. SINGER & SONS, a Corporation, ET AL., *Respondents.*

BRIEF OF UNION PACIFIC RAILROAD COMPANY, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals for the Eighth Circuit is reported in 109 Fed. (2d) 493. The opinion of the District Court for the Western District of Missouri is reported in 26 Fed. Supp. 721.

SUMMARY STATEMENT OF THE MATTERS INVOLVED.

Petitioner's Motion to Intervene and the Intervening Complaint.

Petitioner seeks a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit to review an order of said court affirming an order of the District Court denying petitioner's motion for leave to intervene in the case of *L. Singer & Sons, a Corporation, et al., plaintiffs,* v. *Union Pacific Railroad Co., a Corporation, defendant,* in which case the District Court entered a decree dismissing the complaint (R. 25). The plaintiffs in that case have petitioned this court for a writ of certiorari, which case is docketed as *L. Singer & Sons, a Corporation et al., petitioners,* v. *Union Pacific Railroad Company, a Corporation, respondent,* No. 825 (Supreme Court docket). In that case plaintiffs complained of the construction of tracks serving a produce market in Kansas City, Kansas, on account of damage to their property and business which they asserted would be occasioned to them because of competition which would thereby result, and the plaintiffs there sought to enjoin appellee Railroad Company from constructing said tracks appurtenant to the market. The petitioner in this suit sought to intervene in that case, and in its motion and proposed intervention, as will hereinafter be noticed, adopted in all substantial particulars the allegations of the complaint in that case. To avoid unnecessary repetition of the analysis of the complaint and the questions presented thereby and determined in that case, we respectfully direct the attention of this court to the brief of respondent in

case No. 825 (Supreme Court docket), where the Court will find a full discussion of the questions presented therein. This case, involving the single question of the right of petitioner to intervene, must be considered in connection with case No. 825, which is the main case. A repetition of the arguments and citations there made would inexcusably increase the burden of this court so that counsel respectfully requests, for that reason, that the two cases in so far as common questions be concerned be considered together.

Petitioner asserted in its motion to intervene that paragraph (20) of Section 1 of the Interstate Commerce Act (Title 49, U. S. C. A.) conferred upon it an unconditional right to intervene, because of the alleged interest of petitioner set forth in paragraphs 5(a) to 5(h), inclusive, of the motion (R. 5). The grounds alleged by petitioner as the basis of its asserted right to intervene, as asserted in said paragraphs, are;

(a) A petition was filed with petitioner's city manager on January 9, 1939, by forty-one produce merchants, property owners and business men, requesting that petitioner intervene in said case, and pursuant to which a resolution was adopted by the city counsel authorizing it to draft and file such pleadings as it may conceive necessary;

(b) On May 26, 1931, the people of Kansas City, Missouri, voted a half million dollars in bonds to be used in the construction of a new wholesale and retail market which is now under construction in said city;

(c) For seventy-five years there has been built up in Kansas City, Missouri, a large volume of business and a great number of merchants engaged in buying and selling fruits, vegetables and other food products at

wholesale and retail around the city market; that said merchants have invested in real estate, buildings and improvements; and that said market has been equipped with adequate transportation service and is more than adequate to supply the demand of adjacent territories to Kansas City, Missouri;

(d) That it is the proposed plan or scheme of the respondent Union Pacific Railroad Company to promote the erection of a competing market center in Kansas City, Kansas, and to build the necessary extension of its lines to serve the same whereby it will be enabled to divert revenues from Kansas City, Missouri, and from the persons engaged in said wholesale and retail produce business there, whereby there will accrue to respondent a large diversion of freight from the territory in Kansas City, Missouri;

(e) That the persons engaged in the produce business and otherwise pay large amounts of real estate, personal and occupation taxes and if respondent Railroad Company is permitted to proceed with the promotion of the Kansas City, Kansas, market without obtaining a certificate of public convenience and necessity from the Interstate Commerce Commission, Kansas City, Missouri, will be in danger of losing a large amount of the revenues from the payment of taxes due to the fact that many of the produce merchants will remove from Kansas City, Missouri, and carry on their business in said competing center;

(f) That the aforesaid reasons, (a) to (e), inclusive, constitute questions of law and fact in common with the city's interests and cause of action set forth in the complaint of L. Singer & Sons *et al.*;

(g) That the representation of petitioner's interests by L. Singer & Sons and others, for the foregoing reasons, is inadequate and as to the right of respondent Railroad Company to construct said alleged extension, a judgment in this action would be binding upon petitioner, *there being no public or quasi-public body with any interest in the subject-matter which could adequately represent Kansas City, Missouri, as a party to this suit;*

(h) That the foregoing statements show the need of petitioner "to intervene to protect the public interest of its residents and in order that the process of this court shall not unduly prejudice their interests."

Attached to and forming a part of appellee's motion to intervene was its intervening petition (R. 12), the first eleven paragraphs of which are, in all substantial particulars, identical with the allegations of the main complaint, which has already been analyzed by us in case No. 825 (Supreme Court docket) and which, for purposes of brevity, will not be repeated here.

We will, therefore, consider in this statement the supplementary matter which appellant has injected in its intervening petition. In paragraph 12 (R. 19) it is alleged that neither the Interstate Commerce Commission nor the State of Missouri nor any commission or board of the State of Kansas or of the State of Missouri has instituted any proceeding to secure the relief sought in this action, and that therefore appellant brings this suit. It alleges further that it brings this suit on its own behalf and on behalf of all the citizens and taxpayers in Kansas City, Missouri, who have a common and general interest in this proceeding. It is apparently petitioner's theory that because the United States, the Interstate Commerce Commission and the duly authorized regulatory bodies of the

states of Missouri and Kansas have brought no proceeding, that petitioner is, therefore, authorized to bring such proceeding on behalf of its citizens. In substance, the allegations of the motion and the intervening petition are substantially identical with the allegations of the complaint.

Petitioner contends that because of these grounds it is entitled to relief under paragraph (20), Section 1, of the Transportation Act of 1920 (49 U. S. C. A.), enjoining respondent from constructing the tracks in question, because of the failure of respondent to secure a certificate of convenience and necessity authorizing such construction, as required by paragraph (20) of said section (R. 19).

The Statutes Involved.

Petitioner averred in its motion that respondent had failed to secure a certificate of public convenience and necessity for the construction of the trackage, as required by paragraph (18), Section 1, of the Transportation Act of 1920, which provides as follows:

> "(18) No carrier by railroad subject to this chapter shall undertake the extension of its line of railroad or the construction of a new line of railroad, or shall acquire any line of railroad, or extension thereof, or shall engage in transportation under this chapter over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or

the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity permit of such abandonment."

The petitioner contends that because of the failure of respondent to secure a certificate of public convenience and necessity it is a party in interest within the meaning of paragraph (20) of the Transportation Act of 1920, which provides as follows:

"(20) The commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance or the certificate such terms and conditions as in its judgment the public convenience and necessity may require. * * * carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed * * *. Any construction, operation or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the commission, any commissioner or regulating body of the State or States affected, or any party in interest; * * *."

Summary of Opinion of Circuit Court of Appeals.

The Court of Appeals, affirming the order of the District Court, held that petitioner was not a "party in interest" within the meaning of paragraph (20) who could maintain this action. It predicated its decision upon the rulings of this Court in *Western Pacific* v.

Southern Pacific, 284 U. S. 47, and *Texas and Pacific Ry. Co.* v. *Gulf, Colorado and Santa* Fe, 270 U. S. 266. It held that although the public welfare may be affected by reason of the competitive conditions which might ensue in the produce business and because of a material change being brought about in the transportation situation due to the construction of the alleged extension, yet petitioner had no right to complain because its motion and complaint disclosed that its own welfare could not be directly, but only indirectly and consequentially, affected by the alleged extension (109 Fed. [2d], l. c. 496). The court pointed out that petitioner's welfare could not be directly affected by the proposed extension because it was not in competition with respondent and not engaged in the transportation business. Its concern was mainly the effect upon its revenue of changes which might be brought about because of the construction of a market competing with a similar enterprise already in operation within its city limits. The court held that petitioner had not sustained legal injury which would give it the right to complain (l. c. 496) and accordingly affirmed a decree of the district court dismissing the complaint and denying petitioner's motion because it had not sustained any legal injury.

THE PETITION FOR CERTIORARI.

The petitioner contends that certiorari should be granted by this Court for the following reasons:

1. The decision of the Court of Appeals is in conflict with the decision of this Court in *Western Pacific* v. *Southern Pacific, supra,* and *Texas and Pacific* v. *Gulf-Colorado and Santa Fe, supra,* and 2, That the interpretation of "party in interest" is an important question which this Court should determine and answer.

REASONS RELIED ON FOR DENIAL OF CERTIORARI.

Respondent contends that the petition for certiorari should be denied on the following grounds:

(1) The holding of this Court in *Western Pacific* v. *Southern Pacific,* 284 U. S. 47, that a carrier whose welfare might be directly affected could maintain an action under paragraph (20), Section 1, of the Transportation Act of 1920 to enjoin a competing carrier from invading its territory, and the holding of this Court in *Texas and Pacific Ry. Co.* v. *Gulf-Colorado & Santa Fe Ry. Co.,* 270 U. S. 266, to the same effect were expressly followed by the Circuit Court of Appeals in its decision below, and no conflict is presented; and

(2) The questions as to who may maintain an action as a party in interest and who may represent the public interest has been settled by a long line of decisions by this Court and needs no further exposition or interpretation by this Court in this case.

ARGUMENT.

I.

The holding of this Court in *Western Pacific v. Southern Pacific, supra*, that a carrier whose welfare might be directly affected could maintain an action under paragraph 20, Section 1, Transportation Act of 1920, to enjoin a competing carrier from invading its territory, and the holding of this Court in *Texas & Pacific Ry. Co. v. Gulf-Colorado & Santa Fe Ry. Co., supra*, to the same effect, were expressly followed by the Circuit Court of Appeals in its decision below, and no conflict is presented.

Petitioner unsuccessfully urged in both the District Court and the Circuit Court of Appeals that because its welfare might be adversely affected on account of the possible loss of tax revenue which might result from the competition engendered by the construction of the Kansas City, Kansas, market and the tracks in question serving the same, it was a party in interest within the purview of paragraph 20 and hence authorized to maintain the suit. Petitioner is not a common carrier whose territory will be invaded by the proposed construction. It points out no right created by the Act which has been threatened or violated by respondent. It contends that all that is necessary to bring it in as a party in interest is that its welfare may be adversely affected.

Petitioner claims that the ruling of this Court in *Western Pacific* v. *Southern Pacific, supra,* supported this contention, but a consideration of the facts in that case and the ruling of this Court clearly demonstrates that the decision has no such scope or effect. In that case the West-

ern Pacific had applied to the Interstate Commerce Commission for a certificate of convenience and necessity authorizing it to construct a railroad into a territory contiguous to that then served by it. During the pendency of the proceedings before the Commission the Southern Pacific commenced the construction of a rail line into the same territory proposed to be served by the Western Pacific in its application to the Commission. Western Pacific brought proceedings to enjoin, under paragraph 20, on the ground that its territory was to be invaded and that the proposed construction by Southern Pacific had not been authorized by the Commission. It was asserted by the Southern Pacific that the Western Pacific was a mere paper railroad and hence was not authorized to maintain the action. It was pointed out, however, in answer to that contention, that the application filed by Western Pacific with the Commission was the first step it could take in order to secure authority to construct the track and the location of its line had already been fixed by surveys. In response to that contention this Court ruled that the welfare of the Western Pacific was directly affected by the proposed construction.

The basis of this decision is apparent. It was that the territory of the Western Pacific was to be invaded by unauthorized competition. This Court had previously ruled in *Texas & Pacific Ry. Co.* v. *Gulf Colorado & Santa Fe Ry. Co., supra,* that prior to the enactment of the Transportation Act of 1920, *no carrier* could claim exemption from honest competition. That Act conferred a legal right upon an interstate carrier to be exempt from unauthorized competition, and consequently a carrier whose territory was to be invaded by another carrier through unauthorized competition was a party in interest whose right created by the Transportation Act had been di-

rectly violated and threatened, and such carrier could consequently enjoin said unauthorized competition.

This Court in *Western Pacific* v. *Southern Pacific, supra,* evinced no purpose to depart from the decision in *Texas & Pacific Ry. Co.* v. *Gulf-Colorado & Santa Fe Ry. Co., supra,* or other cases in which the same rule has been applied. It is manifest that if anyone other than a carrier whose welfare might be adversely affected, this petitioner contends, could maintain an action under paragraph 20, then the plain language and historical purpose of the Transportation Act must be ignored.

In the enactment of the Transportation Act of 1920, the dominant objective of Congress was the maintenance and preservation of an adequate and efficient national transportation service in the public interest. At the time of the passage of this Act the railroads of the country had just been returned to private ownership from Government operation during the war. Congress realized that if a national transportation system was to be maintained, extensions of railroads or acquisition of railroads by carriers should be regulated, because improvident expenditures for such purposes might seriously impair the financial ability of the carriers to maintain essential transportation service.(1)

Hence, the Interstate Commerce Commission was the agency selected to control and regulate carriers in the extension of their railroads or the acquisition of new railroads. Public convenience and necessity was to control the judgment of the Commission in applications for authority. Penalties were prescribed for violations (Par. 18, Sec. 1) and the civil remedy of a right to enjoin was conferred by paragraph 20 (see *Powell* v. *United States,* 300

(1) *California R. Com.* v. *Southern Pac. Co.,* 264 U. S. 331; *St. Louis Southwestern Ry. Co.* v. *Missouri Pacific Ry. Co.,* 289 U. S. 82.

U. S. 276). The United States, the Interstate Commerce Commission, any regulatory body of the state or states affected, and any party in interest might secure such injunctive relief.

The public interest in the protection of the transportation system is the dominant idea of the enactment and the agencies delegated with the duty of enforcing civil remedies conferred by paragraph 20 are the United States, Interstate Commerce Commission and any regulatory body of the state or states affected. Petitioner claims that traffic will be diverted from other railroads to respondent, that respondent is making an improvident expenditure for the construction of the tracks in question, and that a material change in the transportation system will occur. In the main, these are all matters which affect public interest which may be asserted by those charged by Congress with the duty of protecting public interest and not by private individuals. The paragraph was not construed by this Court in *Western Pacific* v. *Southern Pacific, supra,* or in any other case, as giving to a private citizen the right to advocate the cause of the public.

Conceivably, the damage that will result to other railroads, as asserted by petitioner, is one which might be claimed by a competing railroad who would suffer such diversion of traffic because of competition between the markets (see *Texas & Pacific Ry. Co.* v. *Gulf-Colorado & Santa Fe Ry. Co., supra*), but petitioner will no more be heard to advocate the cause of a competing railroad than it will be to espouse a public right under the avowed interest of law enforcement.

We submit that this Court, in *Western Pacific* v. *Southern Pacific, supra,* did not, either expressly or inferentially, hold that anyone who might assert his welfare may be adversely affected could avail himself of the remedy

to enjoin, prescribed by paragraph 20.[2] Furthermore, it is questionable that the city's welfare will be even *indirectly* affected, because the decline of taxable property values in one part of the city will necessarily be compensated for by increased levies elsewhere in the city, and it will be the *public,* not the city, whose welfare is concerned.

The contention of petitioner is untenable, not only because the language of the opinion, considered in the light of the questions before this Court, is not susceptible of such construction, but also that such construction would do violence to the legislative purpose in the enactment of the Transportation Act of 1920. *Western Pacific* v. *Southern Pacific, supra,* is in consonance with the other decisions of this Court of the right of an interested carrier to enjoin unauthorized competition and was given full effect by the Court of Appeals in its decision of this case.[3]

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(2) The court expressly said at l. c. 51: "On the other hand, there was no purpose to permit any individual so inclined to institute such a proceeding. The complaint must possess something more than a common concern for obedience to law." The court held it would suffice "if the bill disclosed some definite legal right possessed by complainant is seriously threatened or that the unauthorized and therefore unlawful act of the defendant carrier may *directly* and adversely affect the complainant's welfare by bringing about some material change in the transportation system." (Italics ours.)

(3) The Circuit Court of Appeals quoted at length from this Court's opinion in *Western Pacific* v. *Southern Pacific, supra,* and in expressly following the rule of that case said (R. 48): "The complaint in intervention tendered by Kansas City Missouri, shows that with respect to the proposed extension it stands in substantially the same position as the plaintiffs. Its market place will be injured by the establishment of the rival market, and the taxable values in the city will decline with a resulting loss of revenue. The proposed extension, however, can only be the *remote* cause of the injuries which the city fears." (Italics ours.)

II.

The question as to who may maintain an action as a party in interest and who may represent the public interest has been settled by a long line of decisions of this Court and needs no further exposition or interpretation by the court in this case.

Petitioner asserts that it is a party in interest and, therefore, is authorized to maintain the action because its welfare may be adversely affected by reason of the possibility of a loss of tax revenue which may result from competition on account of the construction of the Kansas City, Kansas, market. It points to no statute, contract or other basis of legal right which it could claim entitles it to have located in its city a market which will exclusively serve not only the residents of Kansas City, Missouri, but also the residents of Kansas City, Kansas, and other areas. In short, it asserts no *direct legal injury*. It merely claims an indirect injury because its welfare may be consequentially affected. From this it argues that it is a party in interest.

That petitioner is not a party in interest in its own behalf is established by the many cases discussed at length under point II of our brief in case number 823, and we shall not needlessly burden this court by a repetition of such discussion here.[4]

The city charges in paragraph (g) of its motion (R. 9) that there is no public or *quasi*-public body which could

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[4] *Alabama Power Company* v. *Ickes*, 302 U. S. 464; *Tennessee Electric Power Company* v. *Tennessee Valley Authority*, 306 U. S. 118; *Railroad Company* v. *Ellerman*, 105 U. S. 166; *Interstate Commerce Commission* v. *Chicago, Rock Island & Pacific Ry. Co.*, 218 U. S. 88, 109; *Arkansas-Missouri Power Company* v. *City of Kennett*, 78 Fed. (2d) 911 (C. C. A. 8); *United States ex rel. New York Warehouse* v. *Dern, Secretary of War*, 68 Fed. (2d) 773 (D. C. App.); *Carolina Power & Light Company* v. *South Carolina Public Service Authority*, 94 Fed. (2d) 520 (C. C. A. 4); *West Tennessee Power & Light Company* v. *City of Jackson*, 97 Fed. (2d) 979 (C. C. A. 6); *Edward Hines* v. *United States*, 263 U. S. 143.

adequately represent appellant as a party to the suit and that it should be permitted to intervene "to protect the public interests of its residents and in order that the process of this court shall not unduly prejudice their interest." It is urged that petitioner is entitled to intervene to protect the public interest. This contention is made despite the fact that the plain language of paragraph (20) confers no right of intervention on the city to protect the public interest. That section provides that any violation of paragraphs (18) or (19) may be enjoined by any court of competent jurisdiction "at the suit of the United States, the Commission, any commission or regulatory body of the State or States affected * * *." Undoubtedly in the enactment of the section Congress felt that the governmental authorities designated were entirely adequate to protect the public interest. If they are not, then the remedy is with Congress through amendment and not by judicial interpolation. The designation of the governmental agencies to represent the public interest must of course be held exclusive of all other governmental agencies for said purpose. Neither by express designation therein nor reasonable implication can it be said that paragraph (20) authorizes a city to invoke the remedy of injunction thereby granted for an alleged violation of paragraphs (18) and (19) of Section 1 of the Interstate Commerce Act.

The agencies designated by the statute, however, are given this authority to the exclusion of all others not named. (See *Botany Mills* v. *United States,* 278 U. S., l. c. 289).

As heretofore stated, the allegations of the motion and intervening petition are substantially identical with the allegations of the main complaint. The injury supposed and which petitioner seeks to avert by its interven-

tion is the competition which will result in the vegetable and fruit commission business, or possibly to carriers other than respondent serving Kansas City, Missouri, but petitioner is one step farther removed from this supposed injury than are the plaintiffs in case No. 825. It was demonstrated in our brief in that case that petitioners therein have no rights which are directly violated or menaced because of the competition ensuing by reason of the market. This petitioner, being one step farther removed than are the parties in that case, certainly would possess no greater rights. In substance, the sole basis of petitioner's motion and intervening petition is the supposed injury that will result to the commission merchants who have memorialized it to intervene in this suit for the protection of the citizens' alleged rights, and the damage to other carriers which petitioner has injected as a subject of great concern to it. But even assuming, *arguenda,* that the plaintiffs in case No. 825 had rights which were being violated, the city is not a party which can litigate that action in behalf of those who claim injury.

Such was the holding in *State of Oklahoma* v. *Atchison, Topeka & Santa Fe Ry. Co.,* 220 U. S. 277, wherein the State of Oklahoma, acting on behalf of its citizens who were shippers, brought an action against the railroad company to restrain it from charging unreasonable rates within the state. This court there held that the state, not being engaged in the transportation business or in the sale of products, was not authorized to maintain the suit to redress grievances concerning property or rights of its citizens.

That the appellant has no authority as a party in interest within the meaning of paragraph (20) to intervene to

litigate a purported cause of action asserted by its citizens is illustrated by *Georgetown* v. *Alexandria Canal Co.*, 37 U. S. 91, which was a suit brought by the City of Georgetown, on behalf of itself and its citizens, against the Canal Company alleging that the latter was constructing an aqueduct across the Potomac River within the corporate limits of the city; that the canal was a public highway which could be freely used by the citizens. The bill prayed an injunction against the Canal Company to restrain it from building the aqueduct. This court there held that the city could not maintain the action because it could show no right to obtain redress for grievances of others.

To the same effect are *Smiley* v. *Kansas*, 196 U. S. 447, l. c. 457; *United States* v. *Smelser*, 87 Fed. (2d) 799, l. c. 800 (C. C. A. 5); and *Radford Iron Co.* v. *Appalachian Electric Power Co.*, 62 Fed. (2d) 940, l. c. 942 (C. C. A. 4).

Petitioner here is in no different situation than was the plaintiff Railroad Company in *Interstate Commerce Commission* v. *Chicago, Rock Island & Pacific Ry. Co.*, 218 U. S. 88, wherein it complained of the effect upon shippers of reductions in rates made by the Commission. The Court disposed of the claim in a single sentence saying that it would not listen to a party who complains of a grievance which is not his.

It was held in *Powell* v. *United States*, 300 U. S. 276, that the remedy afforded by paragraph (20) was exclusive in the persons upon whom the same was thereby expressly conferred. Speaking of this paragraph, this Court recognized that a suit may be filed only by the United States, the Commission, any regulating body of the state affected, or any party in interest (l. c. 288), and,

again speaking of paragraph (20), it said (l. c. 289) respecting the remedy afforded by the paragraph, that "the latter is exclusive."

The real objective of the appellant in intervening is disclosed by the resolution adopted by its Council in which it is stated, with reference to the Kansas City, Kansas, Food Terminal, that

> "WHEREAS, the proposed Food Terminal in Kansas city, Kansas, would merely divide the present market business without increasing the number of consumers or the amount of shipments to or from Greater Kansas City or its trade territory, would greatly decrease property values and would be a wasteful duplication of existing market facilities and those now being constructed in Kansas City, Missouri, out of the bonds voted as aforesaid" (R. 10).

The complaint is that the present market business would be divided and there would be a wasteful duplication of existing market facilities. Therefore, the grievance of the appellant is that the construction of the Kansas City, Kansas, market will provide competition to the Kansas City, Missouri, market, thereby resulting in a division of the present market business and with a wasteful duplication of market facilities. For the same reasons as stated in our brief in Case No. 825, petitioner cannot complain of competition in the market business. It possesses no exclusive or non-exclusive right to engage in the ownership and operation of a market. The absurdity of its position is obvious. On petitioner's theory the City of Kansas City, Kansas, having determined to erect a market, might enjoin the City of Kansas City, Missouri, from erecting a market because of the possible competition that would ensue and the attendant evils of wasteful duplica-

tion of existing market facilities. Petitioner could resort to injunctive process against other cities to restrain the construction of markets where those markets would draw consumers or shippers from the Kansas City market, based on its solicitude for the economic welfare of its commission merchants. Clearly there is no *direct or even indirect* violation of any right of the city because neither for itself nor for its commission merchants has it any monopoly in the operation of a market or the commission business. We cannot believe that this Court will hesitate in reaching the conclusion that Kansas City, Kansas, or any other city for that matter, may build markets without the probability of being haled before the bar of this Court to make a showing that they are not competing with petitioner or its citizens residing within its corporate limits and that the facilities which they are building are not a wasteful duplication of the facilities in Kansas City, Missouri.

Petitioner is not concerned with the building of the tracks, all of which are located in Kansas City, Kansas. The tracks alone would afford no competition, even on its theory. According to the allegations of the motion and the intervening petition the transportation facilities at its market have been and will be adequate. The complaint is leveled solely at the competition which will result to commission merchants on account of the building of the Food Terminal in Kansas City, Kansas. It has been pointed out that the commission merchants have no legal right to be free from competition, from which it follows that the city has no greater right to insist that its residents who are engaged in the commission business shall be free from competition than the latter have.

In concluding, we submit that the city has no right of intervention unconditionally or permissibly under para-

graph (20) of Section 1 of the Interstate Commerce Act, because:

(1) The city is not authorized by that section to bring any action to redress a public wrong, such redress being confined exclusively by the paragraph to the United States, the commission, any commission or regulatory body of the state or states affected;

(2) The city possesses no power to redress the alleged private wrongs of its citizens; and

(3) The city is not a party in interest within the meaning of the paragraph because of any competition that would result on account of the construction of the Food Terminal in Kansas City, Kansas, with the tracks as facilities thereto.

Conclusion.

The decision of the Court of Appeals follows the rule promulgated by this Court in *Western Pacific* v. *Southern Pacific, supra,* and *Texas & Pacific Ry.* v. *Gulf-Colorado & Santa Fe Ry. Co., supra,* by holding that only one whose welfare is *directly* threatened is a "party in interest" within Section 1 (20) of the Interstate Commerce Act. To have held otherwise would have violated the express holding by this Court in a long line of established cases. We submit that it is now unnecessary for this Court to reconsider a question which in numerous cases has already been decided plainly and concisely. The petition for certiorari should be denied.

Respectfully submitted,

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